

## AGREEMENT

**THIS AGREEMENT** is entered into on this 16<sup>th</sup> day of June, 2001, by and between the CITY OF WICHITA, KANSAS, a municipal corporation, called the "City" and HERZOG ENVIRONMENTAL, INC., called the "Contractor."

### INITIATING PROVISIONS:

- A. The City is the owner of the present Brooks Landfill site; and
- B. The City desires to have the solid waste disposal permit it holds for the Brooks Landfill site (Permit No. 213) amended to allow for the filling on the site with construction and demolition wastes as permitted by state law and regulation; and
- C. The City wishes to contract for the development and operation of the site as a construction and demolition waste ("C & D waste") landfill site in operation on and after October 10, 2001; and
- D. To that end, the City has prepared a RFP seeking proposals from qualified firms to establish and operate a construction and demolition landfill; and
- E. The Contractor has submitted the best proposal to establish and operate a construction and demolition waste landfill on the Brooks Landfill site in its proposal dated October 20, 2000 and supplemented by written correspondence to the City dated November 28, 2000.

**NOW, THEREFORE**, in consideration of the compensation in the form of contract rights, Contractor is to receive and the compensation and services contractor is to provide to the City by this agreement, including its incorporated attachments called the Contract Documents, the parties agree as follows:

### ENACTING PROVISIONS:

**ARTICLE I. Scope of Contractor Services.** The Contractor shall, in a good, substantial, and workmanlike manner and in accordance with the requirements and provisions of the Contract Documents perform, execute, construct, operate and complete all work included in the specifications and provisions of the Contract Documents, to include:

1. Provide all required professional services needed to apply for and secure a permit modification from the Kansas Department of Health and Environment to allow for the operation of a construction and demolition landfill on the site of the current Brooks Landfill (KDHE permit # 213). Included shall be all required design drawing, calculations, presentations, and any other products necessary to secure the permit modification. This work shall include receiving any and all local approvals for the modification as required by KDHE or local officials.

2. Supply all labor, equipment, supervision, and materials necessary to operate a construction and demolition landfill in compliance with all federal, state, and local laws, regulations, and requirements.
3. Provide, maintain, staff, and operate a scale house substantially equivalent or superior to the one currently in operation at the Brooks Landfill.
4. Work diligently to develop opportunities to recycle, reuse, or make other beneficial use of the wastes received at the site and shall be entitled to any and all revenues received from the sale of such recycled or reused materials.

**ARTICLE II. Compensation.** The Contractor agrees to pay to the City \$9.00 per ton for each ton of waste received other than waste received from the City of Wichita. The Contractor agrees that the total tipping fee charged to the general public will not exceed \$21.00 per ton for the first year of operation. The Contractor will pay any state imposed tipping fee surcharge. In subsequent years, the maximum amount for the tipping fee to be charged to the general public shall be adjusted by an amount equal to the change for the preceding year in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Statistics calculated from the criteria of North Central Urban, size B, CP1-U. If this Consumer Price Index is unavailable in its present form, the City shall designate a different index to be used for adjustment. Contractors sole and total compensation for performing the duties under this contract shall be the difference between the total tipping fee, any state tipping fee surcharge, and the \$9.00 per ton amount paid to the City plus all revenues received from the sale of material that is presented for disposal at the site.

**ARTICLE III. Operational Responsibilities.** The parties agree to the following allocation of specific contractual duties.

a. The Contractor will:

1. Pay for all utility bills for the site other than those separately metered to the landfill gas collection project and the ground water remediation project.
2. Provide office space for City staff, including utilities and a janitorial service, which is substantially equivalent or superior to that provided under the present contract.
3. Coordinate C&D filling operations with the landfill gas contractor on site to avoid damage to the landfill gas collection and processing system and to allow for the effect and effective operation and maintenance of this system.
4. Accept for disposal from the City up to 48,000 tons of C&D waste per year without charge, of which at least 50% by weight shall be street sweepings, provided that the Contractor receives an additional 96,000 tons per year of C&D waste from sources other than the City.

5. Accept for disposal without charge from the City an additional ton of C&D waste (in addition to the 48,000 Tons provided for in # 4 immediately above), for each ton of waste Contractor receives above 96,000 tons per year from sources other than the City.
  6. Control access to the site, weigh all disposal loads presented at the site and collect from all users, other than the City, the tipping fee established for disposal at the site.
  7. Remit to the City by the 15<sup>th</sup> calendar day of each month the amount collected in the previous month corresponding to the \$9.00 per ton collected on all non-City tons presented for disposal at the site. This remittance shall include an accounting of tonnage and revenues received from all users of the site and such other financial or operational information as the City may reasonably request for it to ensure the site is being properly operated and managed.
  8. Provide and place all required cover material other than final closure cover. Maintain the site as necessary to minimize blowing litter on site and to minimize the amount of litter blowing off site.
  9. Construct and maintain all required haul roads on the site needed for construction and demolition waste disposal and any recycling/reuse processing and reclaiming that the Contractor may elect to engage in.
  10. Provide on site dust control as required to minimize the amount of dust originating at the site that is associated with the handling, processing, and/or disposal of construction and demolition wastes.
  11. Pay for all costs associated with any state tipping for surcharge.
- b. The City will:
1. Provide for the relocation of the natural gas pipeline that crosses the site between Cells A-B and Cells C-D to a route that is not in conflict with filling between Cells A-B and C-D.
  2. Pay for all costs associated with: 1) final closure costs and 2) post closure care of the areas filled with C&D material under this contract.
  3. Agree to reduce by one ton the amount of C&D waste it presents for disposal at no charge to the site for every two tons below 96,000 tons per year that the Contractor receives from sources other than the City.
  4. Agree to pay a tipping fee of \$2.50 per ton for any excess C&D waste presented annually for disposal, after the adjustments noted at Art. III a. 4 and 5 and Art. III b. 3 are calculated.

In default of enumeration in the Contract Documents or later written amendment, any additional operational duty shall be the responsibility of the Contractor.

**ARTICLE IV. Start Date and Agreement Term.** The Contractor shall start work under this Agreement as soon as prudent. The C&D landfill must be operational and open to the public on October 10, 2001. The Contractor must ensure that a schedule for permitting and any required construction is established and followed as necessary to meet this operational date of October 10, 2001. The Contractor shall continue work from that point in conformance with the Contract Documents and in conformance with instructions from the City under options set forth in the Contract Documents for extension of the Contract and any future amendments and shall by the end of the contract term complete all work to provide final grade, construct all appurtenances, and provide suitable final cover, all as indicated in the Contract Documents. The initial term of this Agreement shall run until October 10, 2006. By mutual consent, the Agreement can be extended for one additional five-year period subject to re-negotiation of contract terms. The City will pay final closure costs and post closure care of the areas filled with construction and demolition material under this Agreement.

**ARTICLE V. Recycling or Sale Disclosures.** Contractor shall disclose the terms of sale of all material presented for disposal that the Contractor sells rather than landfilling. For each such sale, the Contractor must disclose the quantity and type of material sold, delivery provisions, date of sale, date of delivery, entity to which sale was made and the compensation received by the Contractor for the material sold.

**ARTICLE VI. Cancellation.** The City reserves the right to cancel this Agreement upon 10 days written notice for any reason. The Contractor reserves the right to cancel this Agreement upon 90 days written notice for any reason, but this cancellation shall not take effect prior to April 10, 2002. In the event of cancellation of this Agreement by the Contractor, Contractor will grant the City the first right of refusal for operational infrastructure including computers, software, and software use licenses associated with the operations on this site.

**ARTICLE VII. Incorporated Attachments.** The parties agree the following attachments are incorporated into this Agreement and, collectively with this Agreement, form the agreed Contract Documents setting their contractual rights and obligations.

- a. November 28, 2000 letter from George Zanter to Joe Pajor
- b. Contractor's Proposal to City of Wichita FP000015
- c. The City of Wichita's RFP No. FP000015, specifically including, without limitation, General Conditions 1-36.

Should there arise conflict between provisions of these various documents, the provisions of this Agreement shall have controlling effect. If this Agreement is silent on the pertinent issue, the provisions of the Incorporated Attachments, listed above in order of descending priority, shall control.

The parties have executed this Agreement as of the day and year first above written.

HERZOG ENVIRONMENTAL, INC.,

CITY OF WICHITA, KANSAS  
by order of the City Council

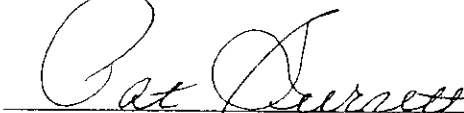
By: 

Joseph A. Kneib, Vice President

By: 

Chris Cherches, City Manager

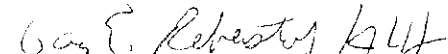
ATTEST:



Pat Burnett, City Clerk



APPROVED AS TO FORM:



Gary E. Rebenstorf, City Attorney